

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte JENNIFER L. RANDALL

---

Appeal No. 2001-0516  
Application No. 08/834,073

---

ON BRIEF

---

Before KRASS, RUGGIERO, and GROSS, Administrative Patent Judges.  
RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1-17 and 19, which are all of the claims pending in the present application. Claim 18 has been canceled.

The claimed invention relates to a surveillance system and a method for selective area motion detection. A motion detector is provided for detecting motion within a selected field of view of a video camera, the motion detector including a mask for masking from motion detection selected portions of the video camera's field of view. More particularly, a target mask image from among

a set of target mask images is selected, dependent on the selected field of view of the video camera, thereby enabling motion detection to be performed on the selected target mask image.

Claim 1 is illustrative of the invention and reads as follows:

1. A surveillance system comprising:

- a video camera having an adjustable field of view,
- a motion detector for detecting motion within a selected field of view of said camera, said motion detector including:

a mask for masking portions of said video camera's field of view from said motion detecting, and

means for loading a mask image into said mask, and said surveillance system further including,

- means for selecting a target mask image from among a set of target mask images, said selecting being in dependence upon said selected field of view of said camera, wherein said motion detecting is performed on the target mask image selected.

The Examiner relies on the following prior art reference:<sup>1</sup>

Kuboyama

5,615,324

Mar. 25, 1997

---

<sup>1</sup> In addition, the Examiner relies on the admitted prior art as illustrated in Figures 1 and 3 of Appellant's specification.

Appeal No. 2001-0516  
Application No. 08/834,073

Claims 1-17 and 19 stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Appellant's admitted prior art in view of Kuboyama.

Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the Brief (Paper No. 23) and Answer (Paper No. 24) for the respective details.

#### OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the Examiner and the evidence of obviousness relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellant's arguments set forth in the Brief along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the obviousness of the invention as recited in claims 1-17 and 19. Accordingly, we reverse.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to

Appeal No. 2001-0516  
Application No. 08/834,073

support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

With respect to the Examiner's 35 U.S.C. § 103(a) rejection of independent claims 1, 13, and 19, Appellant asserts that the

Examiner has failed to establish a prima facie case of obviousness since all of the limitations of claims 1, 13, and 19 are not taught or suggested by the applied prior art references. In particular, Appellant contends (Brief, pages 4 and 5) that Kuboyama, relied on by the Examiner as teaching a target mask selection feature, does not provide for the selection of a mask dependent on or corresponding to a selected field of view of a camera as recited in each of the appealed independent claims 1, 13, and 19.

After careful review of the admitted prior art and the Kuboyama reference, in light of the arguments of record, we are in general agreement with Appellant's position as stated in the Brief. Our interpretation of the disclosure of Kuboyama coincides with that of Appellant, i.e., we find no disclosure of mask selection in dependence upon a field of view of a camera. In particular, as pointed out by Appellant, the portion of Kuboyama referenced by the Examiner (col. 3, lines 37-55) merely describes the detection of the outline of thinned-out image data based on a selection of the original shape data adapted to the object as a target. We can find no support on the record before us for the Examiner's conclusion that Kuboyama discloses the field of view dependent mask selection feature as claimed. The

Appeal No. 2001-0516  
Application No. 08/834,073

Examiner must not only make requisite findings, based on the evidence of record, but must also explain the reasoning by which the findings are deemed to support the asserted conclusion. See In re Lee, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433-34 (Fed. Cir. 2002).

We are further of the view that even assuming, arguendo, that the disclosure of Kuboyama could be interpreted as describing the claimed mask selection feature, there is no indication from the Examiner as to how and in what manner the disclosure of the admitted prior art would be modified by Kuboyama to arrive at the particulars of Appellant's invention as set forth in independent claims 1, 13, and 19. In order for us to sustain the Examiner's rejection under 35 U.S.C. § 103, we would need to resort to impermissible speculation or unfounded assumptions or rationales to supply deficiencies in the factual basis of the rejection before us. In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968), reh'g denied, 390 U.S. 1000 (1968).

In view of the above discussion, it is our view that, since all of the limitations of the appealed claims are not taught or suggested by the applied prior art references, the Examiner has not established a prima facie case of obviousness. Accordingly,

Appeal No. 2001-0516  
Application No. 08/834,073

the 35 U.S.C. § 103(a) rejection of independent claims 1 and 13 and their dependent claims 2-12 and 14-17, as well as independent claim 19, is not sustained.

In conclusion, we have not sustained the Examiner's 35 U.S.C. § 103(a) rejection of any of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1-17 and 19 is reversed.

REVERSED

ERROL A. KRASS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
JOSEPH F. RUGGIERO	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
	)	
	)	
	)	
ANITA PELLMAN GROSS	)	
Administrative Patent Judge	)	

JFR:hh

Appeal No. 2001-0516  
Application No. 08/834,073

CORPORATE PATENT COUNSEL  
U.S. PHILIPS CORP.  
580 WHITE PLAINS RD.  
TARRYTOWN, NY 10591